IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

FRIDAY, THE 30TH MARCH 2007 / 9TH CHAITHRA 1929

WP(C).No. 838 of 2007(Y)

PETITIONER:

K.P.VIMALA DEVI,
HEADMISTRESS (UNDER SUSPENSION),
UNION HIGHER SECONDARY SCHOOL, MAMBRA,
THRISSUR DISTRICT.

BY ADV. SRI.ELVIN PETER P.J.

RESPONDENTS:
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1. **STATE OF KERALA, REPRESENTED BY**
   THE SECRETARY TO GOVERNMENT,
   GENERAL EDUCATION DEPARTMENT,
   GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. **THE DIRECTOR OF PUBLIC INSTRUCTION,**
   THIRUVANANTHAPURAM.

3. **THE DEPUTY DIRECTOR OF EDUCATION,**
   THRISSUR.

4. **THE DISTRICT EDUCATIONAL OFFICER,**
   IRINJALAKUDA, THRISSUR DISTRICT.

5. **THE MANAGER,**
   UNION HIGHER SECONDARY SCHOOL,
   MAMBRA, THRISSUR DISTRICT, PIN-680 308.

BY ADV. SRI.ABRAHAM VAKKANAL for R5
SRI.PAUL ABRAHAM VAKKANAL
SRI.BIJIMON C.CHERIAN
BY GOVERNMENT PLEADER SRI. A.J. VARGHESE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30/03/2007 ALONG WITH WPC NO. 9378 OF 2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.838/2007 Y

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF REPRESENTATION DTD. 22/11/2006 FILED BY THE PETITIONER BEFORE THE D.E.O.**

EXT.P2: **COPY OF THE REPRESENTATION SENT BY THE SECRETARY, UNION HIGHER SECONDARY SCHOOL SOCIETY.**

EXT.P3: **COPY OF THE ORDER DTD. 5/01/2007 ISSUED BY THE 5TH RESPONDENT – MANAGER SUSPENDING THE PETITIONER, ALONG WITH THE CHARGES.**

EXT.P4: **COPY OF THE CHARGE ARRANGEMENT REGISTER KEPT BY THE PETITIONER.**

EXT.P5: **COPY OF THE CHARGE ARRANGEMENT MADE BY THE PETITIONER ON 19/12/2006.**

I.A.NO.3917/2007

EXT.P5: **COPY OF ORDER DTD. 18/01/2007 ISSUED BY THE 3RD RESPONDENT.**

EXT.P6: **COPY OF ORDER, G.O. DTD. 28/02/2007 ISSUED BY THE GOVERNMENT.**

/TRUE COPY/

KSS

K. M. JOSEPH, J.

W.P.C. NOS. 838/07 Y & 9378/07 N

Dated this the 30th March, 2007

JUDGMENT

These Writ Petitions being connected, they are disposed of by a common Judgment.

Petitioner in Writ Petition No.838/07 is one Smt. K.P. Vimala Devi. The petitioner in the other case is the Manager of the Higher Secondary School. Smt. Vimala Devi was the Headmistress of the School. Smt. Vimala Devi's challenge is against Ext.P3. Ext.P3 is the proceedings of the Manager by which Smt. Vimala Devi is placed under suspension for a period of fifteen days. She is seen served with Statement of Charges also vide Ext.P3. Further prayer in the Writ Petition filed by Smt. Vimala Devi is to direct the respondents to reinstate her in service forthwith and allow her to continue in service till the end of the academic year, namely 31.3.2007. She seeks a declaration also that Ext.P3 is vitiated by malafides and hence unsustainable in law. Admittedly, Smt. Vimala Devi who

entered service on 13.9.1974 came to be promoted as Headmistress on 1.4.2006. In the nature of the order that I propose of pass, it is not necessary to deal with the merits of the matter. It is sufficient to say that the normal date retirement of Smt. Vimala Devi on attaning the age of 55 was 9.9.2006. According to her, she was under extended period of service till the end of the academic year on 31.3.2007. She has put up, of course, a case of malafides, and it is towards this end, it is her case that she was suspended vide Ext.P3 order. It is her case that the result of Ext.P3 order dated 5.1.2007 is that she will be deemed to have retired from service from the date of suspension, namely 5.1.2007. The Manager came to levy essentially three charges against her. She has her explanation for all the charges. The Manager in his Writ Petition challenges Exts.P7 and P12. As already noted, Smt. Vimala Devi was placed under suspension by Ext.P3 order in her Writ Petition, dated 5.1.2007. Ext.P7 is the order of the Deputy Director refusing to grant permission to place Smt. Vimala Devi under suspension beyond

fifteen days. Ext. P12 is the order of the Government passed in revision confirming Ext.P7. The prayers are to quash Exts.P7 and P12, to declare that in view of Rule 60(C) Part I, KSR read with Rule 91 of Chapter XIV A KER, Smt. Vimala Devi is not liable to be reinstated as she has retired with effect from 5.1.2007. In the alternative, the Manager seeks a direction to respondents 1 & 2 to give sanction to continue the suspension beyond 15 days from 5.1.2007 till the disciplinary action is over. According to the Manager, the charges levelled against Smt. Vimala Devi are grave. What is stated in Ext.P7 by the Deputy Director is essentially as follows:

A preliminary enquiry was conducted. The Arguments of the Manager based on the charges framed against the Headmistress were examined with reference to the evidences produced at the time of enquiry and found that the charges framed against the Headmistress were not so grave. Thereafter, it is stated that, therefore, the request of the Manager to extend the period of suspension beyond fifteen days is not required. It

is stated that since the teacher is due to retire from service on 31.3.2007, the Headmistress is working on superannuation as per Rule 60(c) Part I KSR. It is stated that hence it is not advised to take any disciplinary proceedings at the fag end of her retirement. The Deputy Director directed the Manager to reinstate Smt. Vimala Devi as HM for duty with immediate effect vide Rule 67(8) of Chapter XIV A KER, which is confirmed in Ext.P12. The complaint of the Manager is that ample evidence was produced before the Deputy Director in the form of Statements which are also produced in this Court as Ext.P11 series, to show that the charges were indeed true. He would contend that the charges as supplemented by the additional charges levelled against Smt. Vimala Devi were indeed grave and indeed warranted the order of suspension beyond the period of fifteen days. Counsel for the Manager submits that at any rate, having regard to Rule 60(c) of Part I KSR read with Rule 91 of Chapter XIV A KER, in view of the fact that Smt. Vimala Devi was placed under suspension on

5.1.2007, the provisions of Rule 60(c) come into play and consequently even proceeding on the basis of the direction contained in Ext.P7, Smt. Vimala Devi must be treated as having retired on 5.1.2007, in view of the admitted fact that she was in fact placed under suspension. In this regard, he would point out that even in Ext.P7 what is directed is reinstatement with immediate effect. He points out the provisions of Rule 67(8) of Chapter XIV A KER in this regard. He submits that when considering the question whether suspension should be permitted beyond fifteen days, it is open to the Educational Officer, if he is not satisfied about the suspension, to direct reinstatement with effect from the original date of suspension. This is not seen done in Ext.P7. In otherwords, the submission is that even taking Ext.P7 as it is, the inevitable result is that by virtue of Rule 60(c), the original order of suspension remains intact and consequently brings in its train the inescapable effect of the deemed retirement from the service from the date of order of suspension. He further points out that there cannot be any

doubt as was sought to be projected by the learned counsel appearing for Smt. Vimala Devi that the mandate in Rule 60(c) will be applicable to Aided School Teachers also, in view of the recent amendment to Rule 62 Chapter XIV A KER with retrospective effect. He ponts out that the Amendment came into force on 15.5.1986. The amendment reads as follows:

> *"Provided further that the extended period of service beyond the actual date of superannuation of the teacher shall not be reckoned as qualifying service for promotion, increment and pension, and the provisions of sub-rule (c) of rule 60 of Part I of the Kerala Service Rules shall apply to the teacher."*

2. Learned counsel for Smt. Vimala Devi would point out that if the argument of the Manager is accepted, it will be open to any Manager to place a teacher under suspension without any basis, with the drastic consequence the law provides, namely to compel retirement. He would submit that there was no basis at all for the order to suspend itself. A large number of materials are produced before me. Under Article 226 of the Constitution

of India, normally the Court does not investigate into questions of fact which are highly disputed. One of the charges of which much is made of by the Manager is that Smt. Vimala Devi was found to have signed the Attendance Register on 19.6.2006 in the morning and afternoon. She has marked casual leave on 20.6.2006. She is found to have marked attendance in the morning and afternoon on 21.6.2006 and this is a clear case where she has cheated the Government, he contends. According to the Manager, materials would show the factual position to be contrary to Smt. Vimla Devi's claim. Smt. Vimala Devi had complained of chest pain while in the School on 19.6.2006 in the morning and she was taken to the hospital from there and she remained in the hospital till she was discharged in the afternoon of 21.6.2006 as is evident from Ext.P11(c), Manager contends. Smt. Vimala Devi has an explanation for the charge. According to her, she was on the way of DEO's Office for collecting SSLC Books and therefore she marked attendance on morning and also afternoon and it was on the way that she had discomfort,

consequently resulting in her being admitted on the way. She has also a case that she signed SSLC Books after she returned to duty on 21.6.2006 after she was discharged in the morning. She has also signed the Notes prepared for the teachers, it is submitted. It is clear, of course, that the Manager reiterates that this is a case where the matter stands proved to the contrary by wealth of evidence as produced before this Court and before the Government also. The Manager has a complaint that when the DD came for enquiry, he did not look into the Statements which were actually shown to him. It is clear that there is no finding of fact entered into by a statutory authority after considering the aforesaid materials. In such circumstances, I am of the view that I need not go into these questions in proceedings under Article 226 of the Constitution of India. About one thing, there can be no dispute and that is that, the teacher who attained superannuation and who continues after superannuation by virtue of Rule 62, will be treated as retired upon the order of suspension being passed. There cannot be any dispute that such

an order was passed as against Smt. Vimala Devi as evident from Ext.P3 in W.P.(C) No.838/07. Ext.P3 is dated 5.1.2007. It is beyond the normal date of retirement and at the time when she was continuing by virtue of Rule 62. Even going by Ext.P7 which is confirmed in Ext.P12, there is no direction to reinstate her with effect from the date of the order of suspension. The inevitable consequence is that the petitioner, as things stand, must be treated as having retired from service on 5.1.2007. But, this result will hold only if the order of suspension remains intact. Smt. Vimala Devi has challenged the order of suspension before this Court and I have expressed the view that it may not be possible for this Court under Article 226 to go into the factual questions raised. I find that Rule 79 of Chapter XIV A KER provides for an Appeal by the teacher placed under suspension. The Manager has filed a Counter Affidavit in the Writ Petition filed by Smt. Vimala Devi denying the allegations of Smt. Vimala Devi. In such circumstances, the Writ Petitions will stand disposed of as follows:

Counsel appearing for Smt. Vimala Devi submits that an Appeal contemplated under Rule 79 of Chapter XIV A KER will be filed within two weeks from the date of receipt of a copy of this Judgment, before the Deputy Director of Education in W.P. (C) No.838/07. If the petitioner in W.P.(C) No.838/07 files an Appeal before the Deputy Director of Education within two weeks from the date of receipt of a copy of this Judgment, the third respondent Deputy Director will proceed to consider and take a decision on the Appeal in accordance with law, within a period of three months from the date of receipt of the Appeal, of course, after affording an opportunity of being heard to the petitioner Smt. Vimala Devi, and the Manager. In view of the fact that the petitioner stands retired by virtue of the order of suspension as it stands, it is clear that the direction in Exts.P7 and P12 in the Writ Petition filed by the Manager (WP(C) NO.9378/07 N) cannot be allowed to operate. It is declared that Smt. Vimala Devi has retired on the basis of Ext.P3 order of suspension as it stands, but it will be subject to the result of the

proceedings by way of Appeal to be filed by Smt. Vimala Devi. It is also made clear that the Deputy Director will decide the Appeal totally uninfluenced by any observations contained either in Ext.P7 or in Ext.P12. In view of the discussion and that the declaration made by me, it is made clear that the Manager is not bound to reinstate Smt. Vimala Devi in terms of the direction contained in Exts.P7 or P12.

K. M. JOSEPH, JUDGE

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